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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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JUL 28 1999

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Applications of )  
)  
Achernar Broadcasting Company )  
)  
Lindsay Television, Inc. )  
)  
For a Construction Permit )  
For a New NTSC TV Station on )  
Channel 64 at Charlottesville, Virginia )

MM Docket No. 86-440

File No. BPCT-860410KP

File No. BPCT-860410KQ

COMMENTS

Viacom Inc. ("Viacom"), the ultimate parent of the licensee of NTSC commercial television station WGNT(TV), Portsmouth, Virginia,<sup>1</sup> by its attorneys, hereby submits comments in the above-captioned proceeding for a construction permit for a new commercial NTSC television station in Charlottesville, Virginia, to be licensed to Charlottesville Broadcasting Company ("CBC"). CBC is the surviving entity from the merger of the above-captioned applicants, Achernar Broadcasting Company and Lindsay Television, Inc. On June 24, 1998, CBC filed a *Supplement to Joint Petition for Approval of Settlement Agreement, For Leave to Amend Application, and For Immediate Grant of Construction Permit* (the "Supplement") in which it proposed that the Commission immediately issue it a construction permit on Channel 19 rather than Channel 64. Viacom filed an informal objection to the Supplement on

<sup>1</sup> WGNT(TV) is licensed to Viacom Broadcasting of Seattle Inc., which is wholly owned by Viacom International Inc. Viacom is the direct parent company of Viacom

(Continued...)

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September 4, 1998 ("Informal Objection"). These comments are filed in response to the Commission's June 25, 1999 *Order* in this proceeding requesting further comments regarding the viability of allocating to Charlottesville, Virginia, a new full-power, commercial NTSC station on Channel 64 or, alternatively, Channel 19. *See In re Applications of Achernar Broadcasting Company and Lindsay Television, Inc.*, FCC 99I-15 (rel. June 28, 1999).

As noted in its Informal Objection, a copy of which is attached hereto as Exhibit A, Viacom has been allocated digital television ("DTV") channel 19 for WGNT-DT, Portsmouth, Virginia. Accordingly, Viacom reiterates its opposition to CBC's request to the extent that it involves the proposed issuance of a construction permit for a new commercial television station on NTSC Channel 19, which is co-channel to Viacom's WGNT-DT allotment, rather than on Channel 64.

As set forth more fully in the Informal Objection, CBC's proposal for an NTSC Channel 19 construction permit should be either dismissed, denied, or conditionally granted. First, the proffered amendment to migrate from Channel 64 to Channel 19 should be dismissed on procedural grounds because it short-circuits the procedures established in the FCC's rules for consideration of major amendments and changes to the Television Table of Allotments, including the opportunity for public notice of and comment on the proposed channel switch. Second, if the amendment is not dismissed on procedural grounds, then CBC's request should be denied on the basis that a new

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(...Continued)  
International Inc.

NTSC Channel 19 would irreparably hinder WGNT-DT's ability to fully serve the Norfolk, Virginia, market, and would severely disadvantage WGNT-DT vis-a-vis its DTV competitors in the Norfolk, Virginia, marketplace by foreclosing WGNT-DT's ability to maximize its DTV facilities because of the impermissibly high level of interference which even a slight improvement in the WGNT-DT facilities would cause to the proposed co-channel NTSC station in Charlottesville. *See Engineering Statement of Hammett & Edison, Inc. attached hereto as Exhibit B.*


Finally, should the Commission deem it in the public interest to grant CBC a construction permit on NTSC Channel 19, such authorization should be granted with the express condition that CBC is forever prohibited from opposing any future WGNT-DT maximization proposal up to and including one megawatt, regardless of the level of interference such maximization would create to CBC's proposed NTSC Channel 19 facility in Charlottesville. This is entirely reasonable given the fact that an NTSC Channel 19 in Charlottesville, Virginia, was never contemplated by the Commission when the DTV Table of Allotments was formulated and the maximization rules were developed. *See Sixth Report and Order in Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, 12 FCC Rcd 14588 (1997).

In sum, Viacom reiterates its earlier-stated position that the proposal of Charlottesville Broadcasting Company to migrate its proposed new NTSC Channel from Channel 64 to Channel 19 should be promptly dismissed on procedural grounds or denied on the merits. In the alternative, if CBC is granted a construction permit for Channel 19, such permit should contain an express provision precluding CBC from

opposing any future effort by WGNT-DT to maximize its power up to and including one megawatt.

Respectfully submitted,

**VIACOM INC.**

By: 

James R. Bayes  
E. Joseph Knoll III

**WILEY, REIN & FIELDING**  
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(202) 719-7000

Its Attorneys

July 28, 1999

**Exhibit A**

**September 4, 1998 Viacom Inc. Informal Objection**

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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In Re Applications of	)	<b>MM Docket No. 86-440</b>
	)	
<b>ACHERNAR BROADCASTING</b>	)	File No. BPCT-860410KP
<b>COMPANY</b>	)	
	)	
<b>LINDSAY TELEVISION, INC.</b>	)	File No. BPCT-860410KQ
	)	
For Construction Permit	)	
For a New TV Station on Channel 64 at	)	
Charlottesville, VA	)	

**INFORMAL OBJECTION TO SUPPLEMENT TO  
JOINT PETITION FOR APPROVAL OF SETTLEMENT AGREEMENT,  
FOR LEAVE TO AMEND APPLICATION AND  
FOR IMMEDIATE GRANT OF CONSTRUCTION PERMIT**

On June 24, 1998, Achernar Broadcasting Company and Lindsay Television, Inc. (collectively, the "Applicants") filed a Supplement to Joint Petition for Approval of Settlement Agreement, for Leave to Amend Application and for Immediate Grant of Construction Permit (collectively, the "Amendment"). The Amendment seeks to amend the pending application for a new station on Channel 64, Charlottesville, so that Charlottesville Broadcasting Corporation ("Charlottesville Broadcasting") can operate a full-power commercial television broadcast station on NTSC Channel 19. Viacom Inc. ("Viacom"), the ultimate licensee of commercial television station WGNT(TV), DTV

Channel 19, Portsmouth, Virginia,<sup>1</sup> hereby opposes the Amendment<sup>2</sup> on two grounds — one procedural and one substantive— and asserts that the Applicants' amendment should be summarily dismissed and/or denied on both grounds. In the alternative, Viacom requests that if the Commission ultimately accepts and grants the Applicants' amendment that it condition such grant so as to require Charlottesville Broadcasting to protect the DTV service area of Station WGNT(TV) in order that WGNT(TV) may upgrade its facilities to fully serve Portsmouth and surrounding communities with digital television service on Channel 19.

**Applicants' Amendment Should Be Dismissed As Procedurally Defective**

In their Amendment, the Applicants urge the Commission to issue an "immediate grant" of a major change application and ignore all procedural rules and the Communications Act so that they might migrate from NTSC Channel 64 to NTSC Channel 19 without notice of any kind to the public. In so doing, the Applicants maintain that "good cause" exists for acceptance of their amendment under Section 73.3522.

Notwithstanding the Applicants' assertion of compliance with the requirements of Section 73.3522, the Amendment fails to adhere to the directive of subsection (c) of that rule, which requires that a petition for leave to amend —such as that filed by the Applicants— may be granted only where *"it is requested that the application as amended be removed from the hearing docket and returned to the processing line."* 47 C.F.R. 73.3522(c). Not only did the Applicants utterly ignore this prerequisite to the preliminary

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<sup>1</sup> The licensee of WGNT(TV) is Viacom Broadcasting of Seattle Inc., which is wholly owned by Viacom International Inc. Viacom is the direct parent company of Viacom International Inc.

act of filing its request for leave to amend, but they urged the Commission to completely disregard the processing line and its attendant notice requirements by skipping to the ultimate act of issuing an "immediate grant." Accordingly, the Commission must deny the Applicants' petition for leave to amend and dismiss the Amendment as facially defective.

Of course, were the Applicants to satisfy the threshold requirement of Section 73.3522(c), by requesting return of their application to the processing line, the Commission then could at least entertain their petition for leave to amend. Even at such time, however, the Commission could not immediately grant the Applicants' underlying amendment. Instead, their amendment would have to be returned to the processing line, whose procedures, governed by Section 73.3572 of the Commission's Rules, require that any request for change in frequency *not* in accord with the Table of Allotments be submitted in the form of a petition for rulemaking to amend the Table. See 47 C.F.R. 73.3572(a)(1). Rule making proceedings, of course, are subject to the procedural rules set forth in the Administrative Procedure Act and the Commission's implementing rules; therefore, the Applicants' request would be subject to notice and public comment. In addition, because of the DTV "freeze" in effect, the Applicants would have to request waiver of that freeze and the Commission would be obligated to evaluate the waiver on an *ad hoc* basis. See Report and Order in Reallocation of Television Channels 60-69, the 746-806 MHz Band, 12 FCC Rcd 22953, ¶ 40 (1998).

To ignore these established procedures would deny the public and affected Commission permittees and licensees the ability to comment on the Applicants' proposed

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<sup>2</sup> This objection is timely filed pursuant to Section 73.3587 of the Commission's Rules.



move to NTSC Channel 19. Indeed, while the Applicants did serve the Amendment on Viacom (based upon the short-spacing of the Applicants' NTSC Channel 19 proposal to WGNT's DTV Channel 19) and on Shenandoah Valley Educational Television Corporation (based upon the displacement of that entity's translator station W19BB by the Applicants' NTSC Channel 19 proposal) there may be other affected parties that Applicants simply do not know about. For example, it is apparent from the Mass Media Bureau's Opposition<sup>3</sup> to the Applicants' Amendment that Applicants overlooked the impact their proposal might have on land mobile radio services in Washington, D.C. Indeed, were the Commission to abide by the truncated procedure advocated by the Applicants, the land mobile radio services affected by Applicants' Amendment would have no opportunity to respond to the legal and engineering arguments advanced by Applicants in their Consolidated Reply to Oppositions, filed on July 23, 1998. In light of the required Commission procedures outlined above, and the Applicants' failure to explain a departure from such procedures at the expense of full public participation, Viacom requests that the Commission dismiss the Amendment proffered by the Applicants.

**Applicants' Amendment Should Be Denied Because It Would Interfere With the Transition to Digital Television**

The Commission has assigned to Viacom's commercial television station WGNT(TV), Portsmouth, DTV channel 19 at a power level of only 60.4 kW. Viacom actively participated in the Commission's DTV proceeding, urging that UHF stations be

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<sup>3</sup> Mass Media Bureau's Opposition to Supplement to Joint Petition for Approval of Settlement Agreement, For Leave to Amend Application and For Immediate Grant of Construction Permit at 2.

assigned power levels sufficient to compete against VHF stations in any given market.<sup>4</sup> Of the seven commercial television stations located in the Norfolk-Portsmouth-Newport News Designated Market Area, station WGNT(TV) has been assigned one of the lowest power levels.<sup>5</sup> And the three commercial VHF stations in the market have been assigned power levels that are 12 to 16 times greater than that assigned to WGNT(TV).<sup>6</sup> The Commission's maximization procedure, therefore, is crucial to WGNT(TV) and its ability to compete in the Norfolk market. Indeed, when the Commission adopted its DTV Table of Allotments, it provided rules and procedures for stations to "maximize," or increase, their service areas as a means of reducing the disparity between UHF and VHF stations. Maximization procedures, the Commission stated, "will provide more opportunities for stations."<sup>7</sup>

However, if the Applicants' Amendment is granted, WGNT(TV) will be foreclosed from the maximization opportunities available to other stations in the Norfolk market and may be unable to compete if its signal is inadequate to reach the same viewers it now reaches via analog signal. As explained on the attached engineering statement, if the Applicants were successful in securing NTSC Channel 19, WGNT(TV) then would be precluded from upgrading its DTV facilities on Channel 19 to even a relatively modest increase in power, from the assigned 60.4 kW to 200 kW, in the direction of Charlottesville Broadcasting's facility. That is because at even this slightly increased power, WGNT(TV)'s DTV facility would create a 2.85% increase in population receiving

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<sup>4</sup> See, e.g., Joint Response to Ex Parte Submissions of MSTV and ALTV, dated Dec. 17, 1997; Supplement to Petition for Partial Reconsideration of the Sixth Report and Order, filed Aug. 22, 1997; Opposition to Petitions for Reconsideration of the Fifth Report and Order and of the Sixth Report and Order, filed July 18, 1997; Petition for Partial Reconsideration of the Fifth Report and Order and of the Sixth Report and Order, filed June 13, 1997.

<sup>5</sup> Only WJCB, DTV Channel 46, Norfolk, with an assigned ERP of 50 kW, has been assigned a lower power level than WGNT. See Sixth Report and Order on Reconsideration, FCC 98-24, at Appendix B, released Feb. 23, 1998.

<sup>6</sup> WAVY, Portsmouth, is assigned an ERP of 729 kW; WVEC-TV is assigned an ERP of 923.2 kW; and WTKR is assigned an ERP of 1000 kW. See Sixth Report and Order on Reconsideration, FCC 98-24, at Appendix B, released Feb. 23, 1998.

<sup>7</sup> Sixth Report and Order in Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, 12 FCC Rcd 14588 at ¶ 31 (1997).

interference within the proposed service area of Charlottesville Broadcasting's NTSC Channel 19 station<sup>8</sup> —a station that was never contemplated when the Commission established the DTV Table. In short, WGNT(TV) would be severely injured were the Commission to grant the Applicants' Amendment. Thus, Viacom requests that the Commission deny the Amendment.

Alternatively, Viacom suggests that in the event the Commission determines to grant the Amendment and authorize a new NTSC television facility on Channel 19 at Charlottesville, the Commission should expressly condition such authorization so that WGNT(TV) is permitted to increase its ERP to any level, up to and including one megawatt, regardless of the level of interference created to Charlottesville Broadcasting's NTSC facility on Channel 19. Given the Commission's interest in promoting the transition to digital television, this condition would serve as a fair and appropriate alternative.

### **Conclusion**


In light of the foregoing, Viacom requests that the Commission dismiss the Applicants' Amendment on procedural grounds or deny it on the substantive ground that WGNT(TV)'s ability to compete in the DTV world will be severely impaired due to the unexpected drop-in of new NTSC Channel 19 in Charlottesville. In the alternative, Viacom requests that if the Commission grants the amendment, it do so by expressly conditioning such grant on WGNT(TV)'s increasing its assigned DTV ERP to any level

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<sup>8</sup> Under the recently released Public Notice governing the processing of DTV applications, this level of interference is prohibited. See Additional Application Processing Guidelines for Digital Television (DTV), released August 10, 1998.

up to and including one megawatt notwithstanding any interference caused to  
Charlottesville Broadcasting's NTSC Channel 19 operations.

Respectfully submitted,

  
Anne Lucey  
Vice President, Regulatory Affairs  
Viacom Inc.  
1501 M Street, N.W., Suite 1100  
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202/785-7300

September 4, 1998

**Engineering Statement of Daniel G.P. Mansergh**

The firm of Hammett & Edison, Inc., Consulting Engineers, has been retained by Viacom Broadcasting of Seattle, Inc., to study a proposal to construct a new Channel N19 TV station at Charlottesville, Virginia.

**Background**

TV Station WGNT, Channel N27, Portsmouth, Virginia, has received a DTV assignment on Channel D19 with a power of 60.4 kilowatts. Due to the pending reallocation of TV Channels 60-69 to public safety and other uses, the Acharnar Broadcasting Company has filed an application with the Commission to construct a new TV station on Channel N19 at Charlottesville, Virginia, in place of its prior pending application for a new station on Channel N64 (FCC File No. BPCT-860410KP). This application proposes a site that is short-spaced to WGNT-DT.

**Interference Analysis**

Calculations using the interference prediction methodology outlined in OET Bulletin No. 69 indicate that grant of the Acharnar Broadcasting application would have a preclusive effect on the ability of WGNT-DT to upgrade its facilities to better serve Portsmouth and surrounding communities. For instance, a relatively modest increase in power of WGNT-DT from the assigned 60.4 kilowatts to 200 kilowatts in the direction of the proposed Channel N19 facility would result in a 2.85% increase in population receiving interference within that proposed station's service area. This is more than the Commission's current policy allows and this represents a new limit on improvement of WGNT-DT that does not currently exist.



Daniel G.P. Mansergh

July 29, 1998

Subscribed and sworn to before me this 29th day of July, 1998

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**HAMMETT & EDISON, INC.**  
CONSULTING ENGINEERS  
SAN FRANCISCO

**CERTIFICATE OF SERVICE**

I, Jenny Markley, certify that I have this 4th day of September 1998 caused true copies of the foregoing "Informal Objection to Supplement to Joint Petition for Approval of Settlement Agreement, for Leave to Amend Application and for Immediate Grant of Construction Permit" to be hand-delivered or placed in the United States mail, first class, postage prepaid, addressed to the offices of the following:

**By Hand Delivery**

James Shook, Esquire  
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Prince Frederick, Maryland 20678

  
Jenny Markley

**Exhibit B**

**Engineering Statement of Hammett & Edison, Inc.**

## Statement of Hammett & Edison, Inc., Consulting Engineers

The firm of Hammett & Edison, Inc., Consulting Engineers, has been retained by Viacom Broadcasting of Seattle, Inc., to study a proposal to construct a new Channel N19 TV station at Charlottesville, Virginia.

### Background

TV Station WGNT, Channel N27, Portsmouth, Virginia, has received a DTV assignment on Channel D19 with a power of 60.4 kilowatts. Due to the pending reallocation of TV Channels 60-69 to public safety and other uses, the Charlottesville Broadcasting Company has filed an application with the Commission to construct a new TV station on Channel N19 at Charlottesville, Virginia, in place of prior pending applications for a new station on Channel N64 (FCC File Nos. BPCT-860410KP and BPCT-860410KQ). This new allotment would be short-spaced to WGNT-DT.

### Interference Analysis

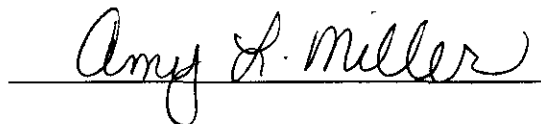
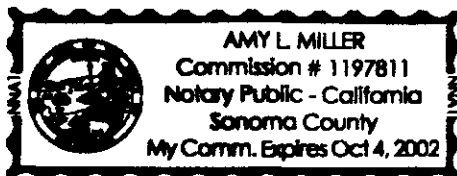
The potential for new interference limits on the WGNT-DT allotment was previously reported by this firm in our statement dated July 29, 1998. Refinements to the implementation of the OET-69 interference prediction methodology used in the previous study have since been incorporated into the firm's software, leading to slightly different calculation results. These results indicate that an increase in power of WGNT-DT from the assigned 60.4 kilowatts to 200 kilowatts in the direction of the proposed Channel N19 facility would result in a 3.27% increase in population receiving interference within that proposed station's service area. This is more than the Commission's current policy allows, and thus this proposal for a new Channel N19 station at Charlottesville, Virginia, represents a new limit on improvement of WGNT-DT that does not currently exist.



Daniel G.P. Mansergh

July 27, 1999

Subscribed and sworn to before me this 27th day of July, 1999





CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date I caused a true and correct copy of the foregoing "Comments" to be hand-delivered or placed in the U.S. mail, first class postage prepaid, on the following persons:

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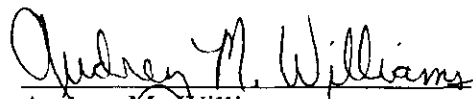
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Dated: July 28, 1999

  
Audrey M. Williams